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IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING
ELECTRIC RESTRUCTURING

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA
PUBLIC SERVICE COMPANY'S
REQUEST FOR VARIANCE OF
CERTAIN REQUIREMENTS OF A.A.C.
4-14-2-1606

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING THE
ARIZONA INDEPENDENT
SCHEDULING ADMINISTRATOR

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON
ELECTRIC COMPANY'S
APPLICATION FOR A VARIANCE OF
CERTAIN ELECTRIC POWER
COMPETITION RULES COMPLIANCE
DATES

DOCKET NO. E-01933A-98-0471

ISSUES IN THE MATTER OF TUCSON
ELECTRIC POWER COMPANY'S
APPLICATION FOR A VARIANCE OF
CERTAIN ELECTRIC COMPETITION
RULES COMPLIANCE DATES

DOCKET NO. E-01933A-02-0069

**RESPONSE OF PANDA GILA RIVER,
L.P. TO STAFF'S REQUEST FOR A
PROCEDURAL ORDER**

On May 13, 2002, Commission Staff filed a "Request for Procedural Order" ("Request") in response to the Commission's May 2, 2002 Procedural Order governing the conduct of further proceedings in Docket No. E-00000A-02-0051, the Commission's generic proceeding concerning electric restructuring. In its Request, Staff requested that "the parties provide Staff with brief written comments on the following topics: 1) the criteria for selecting the independent evaluator; 2) the role of the independent evaluator in

1 the Track B proceeding; 3) the payment arrangements for the independent evaluator; and
2 4) a description of the various types of competitive solicitations and their attributes.”
3 Request at 2. Panda Gila River, L.P. (“Panda”) submits these comments in response to
4 Staff’s request.

5 **1. Criteria For Selecting The Independent Evaluator**

6 To ensure independence, the evaluator retained in this proceeding should not have
7 been retained, employed or otherwise have received tangible benefit from APS, TEP or
8 any subsidiary, parent company or affiliate of APS or TEP during the last five years. One
9 of the primary purposes of the evaluator is to ensure that APS and TEP do not implement
10 the competitive solicitation in any manner that would unfairly benefit their affiliates, and
11 the evaluator must have no connection with either utility or such affiliates to guarantee
12 independence.

13 The evaluator also must not be under contract with any party to this proceeding for
14 services related to any of these consolidated dockets, whether as a testifying or
15 nontestifying expert. If the independent evaluator has been retained by any party to this
16 proceeding for services unrelated to this proceeding, the evaluator should be required to
17 disclose the terms of such employment to Staff and the parties to ensure that existing
18 contracts do not taint the evaluator’s independence.

19 The goal is to get the best deal for the ratepayers of Arizona in terms of price, risk,
20 and reliability and in order for the independent evaluator to assist in achieving this goal he
21 or she must possess two primary skill sets: (a) project development skills and (b)
22 production and transmission system modeling expertise. The project development skills
23 are most important and consist of experience in negotiation of contracts and pricing,
24 financial evaluation of power projects, and a working knowledge of generating facilities.
25 The individual or team with these skills reviews the bids, puts them in a common format,
26 and conducts a thorough financial analysis. The individual or team with the production

1 and transmission system modeling skills provides input to the bid reviewer(s) to make sure
2 that the capacity and energy from the bids is deliverable and the associated risks and costs
3 of delivery are properly reflected in the financial analysis. The evaluation of bids may be
4 split into two categories (the technical evaluation and the economic analysis). If
5 appropriate, the Commission could select a mix of experts or teams to provide the best
6 guidance through the process and evaluation of bids.

7 Commission Staff already has experience selecting independent consultants to assist
8 Staff and the Commission in contested proceedings. Panda believes that the Commission
9 should issue an RFP seeking proposals to serve as the independent evaluator, and should
10 select the evaluator based on responses to the RFP. This was the procedure used in
11 selecting a Third Party Test Administrator and Third Party Test Transaction Generator to
12 evaluate Qwest Operational Support Systems in Qwest's application for authority to offer
13 in-region long distance services pursuant to the Telecommunications Act of 1996. The
14 Commission could use a similar process here.

15 **2. Role Of The Independent Evaluator In The Track B Proceeding**

16 To ensure that utilities and their generation and marketing affiliates do not
17 administer the process for their own benefit, the independent evaluator should be involved
18 in all steps of the process. The evaluator should participate in the Track B process and
19 assist the parties in developing guidelines for the competitive solicitation. The evaluator
20 should develop rules for the solicitation according to the guidelines developed in Track B,
21 assist TEP and APS in drafting proposed solicitations and model contracts to ensure that
22 the RFP complies with the procedures and rules, should have ultimate authority to review
23 submitted bids and select a short list of candidates, and should prepare a report to the
24 Commission regarding the RFP, bids, scoring and selected candidates. Commission Staff
25 and APS personnel (not affiliated with generation development) may participate on the bid
26 evaluation team, but the team should be led by the independent evaluator(s).

1 **3. Payment Arrangements For The Independent Evaluator**

2 Costs of the independent evaluator should be borne by APS and TEP as the utilities
3 issuing the competitive solicitation. This arrangement is common for consultants required
4 in Commission proceedings, and was used by the Commission in Qwest's Section 271
5 proceeding. In that case, requiring Qwest to pay for the costs of the consultant did not
6 make the consultant beholden to Qwest, and there is no reason to believe that requiring
7 APS and TEP to pay for the independent evaluator will lead the evaluator to be biased in
8 favor of APS or TEP here.

9 However, to ensure there is no perception of a conflict of interest, the independent
10 evaluator(s) should be retained and paid by the Commission. The Commission would be
11 reimbursed for such expense by APS and TEP. The independent evaluator would be on a
12 fixed payment schedule, which the Commission can refuse to pay based on failure to meet
13 deadlines, or negligence, but not based on the results of the evaluation. The fixed payment
14 schedule allows the evaluator(s) to be truly independent, and although the evaluator(s) are
15 retained by the Commission, the evaluation should not be directed by the Commission or
16 its Staff.

17 In the alternative, the Commission could be reimbursed for the costs of the
18 independent evaluator by fixed bid fees not to exceed \$10,000 per bid. The actual bid fee
19 would be based on the fixed costs under the evaluator's contract and the expected number
20 of bids.

21 **4. Types Of Competitive Solicitations**

22 There are a number of possible solicitation structures the Commission could use in
23 seeking bids for Standard Offer Service, but Panda believes an RFP or a Sealed Bid
24 Auction¹ would be most appropriate. An RFP would result in one or more pay-for-

25 ¹ Other forms of competitive solicitation include clock auctions (where bidders would make descending bids for a
26 fixed period of time), two-stage bidding (in which bidders first present unpriced proposals, with final proposals and
price terms in a second stage) and dual bid auctions (where a sealed bid auction sets the initial bid, followed by a
timed public bid auction). However, none of these forms of solicitation provide additional benefit, and most public

1 performance contracts no shorter than one year in duration. First, APS and TEP would
2 issue requests that include instructions, schedules, background information, a package
3 with specific forms allowing for fixed-price or fixed-formula pricing and required non-
4 price terms to be included in each bid. After bids are submitted, the bids would be
5 screened for acceptance based on clear, precise threshold conditions known in advance.
6 The best bids would be short-listed on a "winners list" and negotiations would ensue to
7 finalize contracts based on each of the winning bids. Lastly, the final contracts would be
8 approved by the Commission. All bids would be kept confidential, but the final winning
9 contract(s) would be made public. Such an RFP allows the weighing of risk, reliability
10 and other non-price factors along with price in the form of negotiation, and is anticipated
11 to be the best competitive solicitation option.

12 Alternatively, Sealed Final Bid Auctions could be used, but are most effective only
13 when little or no significant variation is expected in the non-price factors of the bid. It is
14 likely that there will be significant variation in the non-price terms of the potential
15 suppliers' bids. Therefore, an RFP, which allows the weighing of risk, reliability and
16 other non-price factors along with price in the form of negotiation is anticipated to be the
17 best competitive solicitation option.

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utilities have experience with RFPs and sealed bid auctions.

1 RESPECTFULLY SUBMITTED this 20th day of May 2002.

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